



County Of San Diego, California

Auditor and Controller

Final Report

GRAND JURY AUDIT OF THE COUNTY OF SAN DIEGO PUBLIC ADMINISTRATOR/ PUBLIC GUARDIAN'S OFFICE

Office of Audits & Advisory Services

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Report No. A06-009



County of San Diego

DONALD F. STEUER
CHIEF FINANCIAL OFFICER
(619) 531-5413
FAX (619) 531-5219

AUDITOR AND CONTROLLER
1600 PACIFIC HIGHWAY STE 166, SAN DIEGO, CALIFORNIA 92101-2478

TRACY M. SANDOVAL
ASST. CHIEF FINANCIAL OFFICER/
AUDITOR & CONTROLLER
(619) 531-5413
FAX (619) 531-5219

January 10, 2006

James Vlassis, Foreman
County of San Diego Grand Jury
330 W. Broadway, Suite 477
San Diego, CA 92101-3830

Dear Mr. Vlassis:

FINAL REPORT: COUNTY OF SAN DIEGO PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

The Office of Audits & Advisory Services (OAAS) completed an audit of the County of San Diego Public Administrator/Public Guardian's (PA/PG) Office. The report addresses all concerns presented in your request for audit.

Thank you for the opportunity to be of service to your office. If you have any immediate concerns about the report, please contact me at (858) 495-5662.

Sincerely,


KENNETH J. MORY
Chief of Audits

AUD:SEW:bm

Enclosure

c: Donald F. Steuer, Chief Financial Officer
Tracy M. Sandoval, Assistant Chief Financial Officer/Auditor and Controller

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EXECUTIVE SUMMARY

At the request of the Grand Jury, the Office of Audits & Advisory Services (OAAS) has conducted a limited scope audit of the County of San Diego Public Administrator/Public Guardian's (PA/PG) office. The Public Guardian conducts official investigations into conservatorship matters and serves as the legally appointed guardian for persons who have been determined by the Courts to be incapable of caring for themselves. The Public Administrator is charged with investigating and administering the estates of persons who die with no will, or without an appropriate person willing or able to act as an administrator.

The objective of the audit was to determine if the PA/PG is in compliance with applicable policies and procedures and has followed contractual and legal requirements with regard to specific processes. The audit scope was later expanded to include the validation of certain situations and risks identified in a memo by County Counsel dated November 23, 2004.

Below are the results of the audit.

Forwarding Estate Proceeds to Department of Health Services (DHS) – Under the California Probate Code, if the individual was a Medi-Cal recipient, the PA/PG is required to notify DHS within 90 days of the decedent's death or the date the PA/PG was appointed to the case. For each of the large estate files (i.e. >\$100,000) tested, OAAS found that DHS was properly notified within 90 days of the decedent's death or the date the PA/PG was appointed to the case. The notification was part of the petition for appointment and therefore, occurred on a timely basis. OAAS also tested smaller estates and found that for the smallest estates (i.e. <\$30,000 and no court involvement), there were several instances where DHS was not notified on a timely basis or not at all. Per the PA/PG, since these estates are usually insolvent, there is very little residual to pay any DHS claims. Therefore, historically, the deputies have not been notifying DHS on a regular basis.

OAAS also found that there is no standardization in the process for determining last illness expenses. These expenses take priority over general debt, which includes other medical expenses that were not related to last illness expenses, and should be pro-rated amongst all the creditors within the same category of debt. During testing, OAAS found some cases where preference was given to DHS claims, even though there were other medical expenditures that were incurred around the same time and appear to be related to the last illness. In other instances, preference was given to medical providers over DHS.

Since there is no supporting documentation to show which claims are included in the last illness category and how the amounts paid were calculated, OAAS was unable to make a determination of appropriateness. However, based on the testing performed, OAAS found that the process for determining last illness expenses needs to be standardized and supervisory oversight needs to be strengthened.

County Counsel Charges - Audit work found that all legal charges for the case files tested were appropriate and fall within the statutory guidelines as set forth in the California Probate Code. The compensation for ordinary services provided by the attorney is a fixed percentage of the value of the estate. As such, the number of hours spent providing legal services to the estate, are irrelevant to the amounts charged to the estate. Furthermore, these fees are approved by the court prior to distribution.

Professional Qualifications and Continuous Professional Training - Audit interviews found that new deputies are trained primarily through "On the Job Training" rather than by a formalized training program. OAAS was not able to identify any statutory requirements regarding the qualifications of a deputy PA/PG.

However, OAAS found instances where the deputies did not meet the minimum qualifications as set forth in the County recruitment notice at the time of application. Additionally, there were deputies whose experience qualified based on the Department of Human Resource's subjective interpretation of the experience requirement. Minimum qualifications for the deputy PA/PG position have been continually revised. Currently employed deputy PA/PGs that did not meet the qualifications at the time of these revisions were grandfathered in and no additional training was provided to these deputies.

Regarding continuous professional training, discussions with the PA/PG have indicated that the Department is only required to participate in County-provided training. A review of the formal training courses taken by the deputies in the last two years found the majority of the classes were not related to core competencies. OAAS obtained the training records for the deputies who have taken classes with the California State Association of Public Administrators, Public Guardians and Public Conservators (CSAPA/PG/PC). Out of the thirteen deputies, only two deputies have attended CSAPA/PG/PC training in the fiscal year beginning July 1, 2004 to present, related to core competencies. Furthermore, only one deputy is certified through the association.

OAAS also found that the PA/PG does not appear to have any personnel within the office that possess the skill set necessary to serve as a resource for asset management and securities activities. In addition, the tax preparation for the estates is performed both in house and contracted out to a former PA/PG Estate Tax Accountant, who prepares the returns as an independent contractor. However, audit work found that these resources may not be sufficient to provide the PA/PG with the tax expertise needed and could expose the County to unnecessary financial risks.

Reporting Process and Management Review - The PA/PG was undergoing personnel transitions at the time of the audit, especially at the management level. However, there is no documentation regarding the functions of the supervising deputies to assist with the transition. As such, the supervisory reviews and roles and responsibilities are not institutionalized. Furthermore, the case management processes that were in place appear to rely on the individual deputies to be accountable for their case files. As a result, throughout fieldwork, OAAS found instances where the supervisory oversight and reporting process can be strengthened.

County Counsel Memo - The Senior Deputy County Counsel for the PA/PG wrote a memo dated November 24, 2004 outlining concerns and risks identified while with the PA/PG. To the extent that supporting documentation was available, OAAS reviewed and validated that those specific transactions, as requested by the Grand Jury, occurred as cited in the memo.

INTRODUCTION AND BACKGROUND

In the County of San Diego, the Public Administrator (PA) also serves as the Public Guardian (PG). However, the functions of the PA are distinct from the PG conservatorship services.

Specifically, the PA investigates and administers the estates of persons who die with no will or without an appropriate person to act as an administrator. The PG serves as the legally appointed conservator for persons found by the Courts to be unable to take care of themselves. Services provided by the Office of the Public Administrator/Public Guardian (PA/PG) are authorized by California Statute and monitored by the Probate Division of the Superior Court of California.

For Fiscal Year 2005-06, the office has a budgeted staff of 38 full time equivalents (FTE) and an operating budget of approximately \$3.1M. The PA/PG heads the office and is assisted by an Assistant PA/PG as well as supervising deputy PA/PGs. There are six divisions within the office: Conservatorship Services, Decedent Services, Investigation, Property Management, Fiscal and Administrative Services.

AUDIT SCOPE AND LIMITATIONS

At the request of the Grand Jury, the Office of Audits & Advisory Services (OAAS) has conducted a limited scope audit of the County of San Diego Public Administrator/Public Guardian's (PA/PG) office. The objective of the audit was to determine if appropriate policies and procedures, and contractual and legal requirements have been followed with regard to:

- The forwarding of estate proceeds for medical expenses related to the California Department of Health Services' Medi-Cal program;
- The appropriateness of County Counsel charges for services rendered to the PA/PG for the last five years;
- The required professional qualification and continuous professional training necessary for PA/PG to perform its functions;
- Establishing consistency in reporting methods and management reviews with regards to case files in both PA and PG offices; and
- The disposition of certain documents that were believed to be missing from a probate file (i.e. related to a property that was destroyed in the 2003 Cedar Fire). At the status update meeting with the Grand Jury on October 20, 2005, this item was excluded from the scope as the Grand Jury is conducting their own separate investigation.

The audit scope was later expanded to include the validation of certain transactions cited in a memo dated November 23, 2004, where the County Counsel assigned to the PA/PG outlined risks identified within the office. These transactions included:

- Sale of stock and securities for a specific estate.
- Real property transactions for various estates.

OAAS was also asked to agree the 'Assets managed by the PA/PG as of September 2005' report, provided by the PA/PG, to supporting documentation.

This audit was conducted in accordance with auditing standards prescribed by the Institute of Internal Auditors, Inc., as required by California Government Code, Section 1236.

METHODOLOGY

OAAS implemented a multi-faceted methodology that included the following:

- Obtained a listing of all the cases managed by the PA/PG which had Medi-Cal payments for the period August 1, 2002 through August 31, 2005. From the listing, OAAS selected the 50 largest (\$\$) cases for testing;
- For each case tested, OAAS reviewed the timeliness of the notice of death to the Department of Health Services (DHS). For probate cases, OAAS relied on the dates on the 'Notices of Petition to Administer Estate,' which were sent to all creditors, including DHS. These are legal court documents with an affidavit, attesting that the PA/PG sent out notices to all creditors and the date sent. For Summary Probate cases, OAAS relied on the date of the file copy of the notification letter sent to DHS;
- For the cases selected in the Medi-Cal testing, OAAS also tested the appropriateness and validity of the County Counsel fees charged to the estate. (Note: This was limited to testing PA legal fees for cases in the last three years);
- Selected the ten largest County Counsel fees charged to estates managed by the PA in the last five years for testing;
- Recalculated and validated the amounts paid to DHS to ensure the amount was valid and appropriate;
- Reviewed supporting documentation to validate interview data;
- Reviewed support documentation to agree September 30, 2005 asset balances;
- Reviewed PA/PG deputy training attended and completed from FY 2004 to present; and
- Reviewed PA/PG deputy qualifications to determine if they met the minimum qualifications at the time of hire.

AUDIT RESULTS

The following discusses the results of the OAAS' audit to determine whether or not the PA/PG was compliant with applicable statutes, contractual requirements and departmental policies and procedures.

I. Forwarding of Estate Proceeds to DHS for Medi-Cal Expenses

The County of San Diego Grand Jury had concerns that estate proceeds to reimburse the DHS Medi-Cal program for medical expenses were not properly forwarded by the PA/PG on a timely basis. For each of the large estate files (i.e. >\$100,000) tested, OAAS found that the DHS was properly notified within 90 days of the decedent's death or the date the PA/PG was assigned to the case. As the notification is part of the petition for appointment, it occurs on a timely basis.

However, out of a sample size of fifty case files, OAAS found that for smaller estates (i.e. <\$30,000 and no court involvement), there were many instances where the PA/PG has not been notifying the DHS on a timely basis or where there was no evidence of notification at all. Per the PA/PG, since these estates are usually insolvent, there is very little residual to pay any DHS claims. Therefore, historically, the deputies have not been notifying DHS on a regular basis, despite the statutory requirement to do so.¹

¹ Per the Section 215 of the California Probate Code, the PA/PG is required to notify DHS within 90 days of the decedent's date of death or date of appointment.

OAAS also found inconsistencies in the priority of payments for medical expenses related to last illness.² Per Section 11420 of the California Probate Code, if the property in the estate is insufficient to pay all debts within the same category of debt, each debt in that class shall be paid a proportionate share. However, in some cases, preference was given to DHS claims, although there were other medical expenditures that were incurred around the same time and appear to be related to the last illness. While in other instances, preference was given to medical providers over DHS. Since there is no supporting documentation to show which claims are included in the last illness category and how the amounts paid were calculated, OAAS was unable to make a determination of appropriateness.

OAAS also found one instance where the decedent's childcare expenses were paid prior to the DHS. While the amount paid (i.e. ~\$347), is immaterial to the DHS claim, the priority of payment was not correctly applied by the deputy.

Per the PA/PG, it is up to deputies' judgment to determine which bills should be included in the last illnesses category. However, per discussion with the supervising deputy in the PA unit, preference is generally given to DHS. Based on the testing performed, OAAS found that the process for determining last illness expenses needs to be standardized and supervisory oversight needs to be strengthened.

II. Appropriateness of County Counsel Charges

The Grand Jury requested that the OAAS review the County Counsel charges for the last five years to determine if they were appropriate and within legal requirements. There were concerns that County Counsel may be charging estates in excess of the number of hours spent on the case.

Audit work found that all attorney fees for the case files tested were calculated appropriately and fell within applicable statutes.

The compensation for ordinary services provided by the attorney is a fixed percentage of the value of the estate. For PA cases, the percentages are set forth in the California Probate Code. For PG cases, the percentages are set by the PA/PG in its office policies and procedures. As such, the number of hours spent providing legal services to the estate are irrelevant to the amounts charged to the estate. Furthermore, and for additional oversight, these fees are approved by the court prior to distribution. There may be instances where County Counsel spends a great deal of time on a case but recovers a nominal amount from the estate, as the PA/PG is only able to charge the statutory fees. Other cases may require minimal legal hours but the fees recovered are significant due to the value of the estate.

Table 1. Schedule of Compensation for Legal Services of PG Cases

	Legal Fees Charged to the Estate ³
First Year of Conservatorship	Larger of \$750 or 0.3% of First \$15,000 2.25% of the Next \$85,000 .75% Over \$100,000
Second Year of Conservatorship	Larger of \$500 or 1.5% of First \$15,000 1.125% of the Next \$85,000 .375% Over \$100,000

² Per § 11420 of the Probate Code, expenses related to the last illness are paid in the 4th priority over all other general debts, which include other medical expenses.

³ Office of the Public Administrator/Public Guardian Department Policies and Procedures.

Table 2. Schedule of Compensation for Legal Services of PA Cases

Estate Values	Legal Fees Charged to the Estate ⁴	
<\$30,000	\$ 0	Cases do not require County Counsel as there typically is no court supervision
>\$30,000 but < \$100,000	Greater of \$1,000 or 4% of the Estate Value	Summary probate, which requires minimal County Counsel involvement
>\$100,000	4% of the first \$100,000 of the Estate 3% of the next \$100,000 of the Estate 2% of the next \$800,000 of the Estate 1% of the next \$9,000,000 of the Estate 0.5% of the next \$15,000,000 of the Estate	Probate Case with full County Counsel involvement

III. Professional Qualifications and Continuous Professional Training

OAAS was not able to identify any statutory or legal requirements regarding the qualifications of a deputy PA/PG. Audit interviews found that new deputies are trained primarily through "on the job training" rather than a formal training program.

The National Guardianship Association (NGA) is an industry group whose mission is "to provide, establish and promote a nationally recognized standard of excellence in guardianship." Although the NGA does not have any regulatory or statutory oversight of the PA/PG, they have provided Standards of Practice and Code of Ethics. (**Note:** These qualifications are guidelines provided by the NGA and do not represent mandated or legal requirements).

In the Standards of Practice, Public Guardians are encouraged to have "decision making" staff become Registered Guardians. Qualifications for Registered Guardians include:

- A high school degree plus 1 year experience, or
- College degree in a field related to guardianship, or
- Completion of the course curriculum or training in guardianship.

OAAS also reviewed the current County of San Diego class specifications for the Deputy PA/PG position. The position requires a bachelor's degree from an accredited college or university with a major in Gerontology, Social Work, Business Administration, Public Administration or a closely related field, and two years of professional experience with a public or private agency managing caseloads pertaining to meeting the personal and financial needs of clients. (**Note:** the class specifications were revised in 2003 to require a bachelor's degree). Previously, a degree was not necessary and five years of experience in a broad range of fields was sufficient in lieu of the degree. As such, currently employed deputy PA/PGs that did not meet the qualifications at the time of the revisions were grandfathered.

A review of the applications for the thirteen PA/PG deputies currently employed with the County revealed that:

- Two deputies did not meet the minimum qualifications as set forth in the applicable class specifications, at the time of application.
- Three deputies did not meet the education requirement as set forth in the applicable class specifications but had sufficient qualifying experience,⁵ at the time, as determined

⁴ Section 10810 of the California Probate Code

by the Department of Human Resources (DHR). However, OAAS found that the qualifying experience appears to be based on a broad interpretation by DHR of the required "case management experience in health and human services field." These deputies applied with prior experience as Eligibility Technicians, which based on the class description, performs assessments to determine whether or not an individual is eligible for aid. Subsequent job announcements of the recruitment and discussions with current DHR analysts found that this type of experience likely would not qualify for current recruitments to the same position.

- Two deputies were determined to have met the experience requirement based on DHR's interpretation of qualifying experience. Although each of the deputy's prior experience did not directly meet the stated class specification requirements,⁶ the DHR analyst determined that their experience related sufficiently to the functions of the position to qualify them. Per DHR, their position is that equivalent experience does not have to exactly match the classification specifications. Instead, the applicant must demonstrate that their experience is related and could qualify them to perform the essential functions of the position.
- OAAS also found one deputy that did not meet the education requirement as stated in the class specifications. However, the DHR analyst took into account the courses completed by the applicant in pursuit of a Masters degree, as a four year equivalent to the degree, and therefore qualified the applicant. Per DHR, this is an acceptable practice within the Department and the general policy for applicants who are close to qualifying is to "err on the side of inclusion."
- Six deputies were hired under class specifications that required the successful completion of "Agency Approved Case Management training, as required by Title XIX of the Social Security Act" prior to passing probation. The PA/PG and DHR were unable to provide OAAS with documentation showing completion of such training. Furthermore, discussions with the deputies revealed that they were unaware of any such requirement. Therefore, OAAS concludes that is likely that the training was never completed.

Regarding continuous professional training, discussions with the PA/PG have indicated that the office does not have any required training other than those required by the County. A review of the formal training courses taken by the deputies in the last two years found the majority of the classes do not appear to be related to core competencies. OAAS obtained the training records for the deputies who have taken classes with the California State Association of Public Administrators, Public Guardians and Public Conservators (CSAPA/PG/PC). Only two deputies have attended CSAPA/PG/PC training in the fiscal year beginning July 1, 2004 to present. Furthermore, only one deputy is certified through the association.⁷

While deputies have overall assigned responsibility for managing the cases, certain aspects of the cases are handled by other PA/PG personnel with the expertise in the areas of real property management, tax services and legal services. However, OAAS found that the PA/PG does not appear to have any personnel within the office who have the skill set necessary to serve as a resource for asset management and securities. Furthermore, the current resources available in the tax preparation may not be sufficient to provide tax expertise needed by the office.

⁵ Class specifications at the time of hire require five years case management experience in the Health and Human Services Field, or other related field investigative experience. These deputies had experience as an Eligibility Technician or Benefits Analyst, which currently would not be qualifying experience.

⁶ The class specifications require a Bachelor's degree and 1 year experience in a position equivalent to a Deputy Public Administrator Guardian I in the County of San Diego. These deputies had experience as an investigator with U.S. Customs and as a private attorney.

⁷ Members that have thirty (30) units of qualifying courses receive certification from the association. An additional eight (8 units) are required each year for continued certification. This certification is optional and is offered through the CSAPA/PG/PC.

Currently, tax preparation is performed both in house and contracted out to a former PA/PG Estate Tax Accountant, who prepares the returns as an independent contractor. The tax returns for the PG unit were prepared by the independent contractor while those of the PA unit were prepared by the supervising PA/PG deputy. The supervising PA/PG deputy holds a California Tax Education Council (CTEC) tax registration for tax preparation, while the independent contractor does not have any certifications and is not registered with CTEC, as required by law.⁸ However, while employed with the PA/PG, the individual was the Estate Tax Accountant, whose duties included the preparation of estate tax returns. Tax expertise is especially needed in the sale of securities for estates, which often times can result in a large tax liability to the estate.

The lack of specialized skill sets available to the PA/PG can be problematic. Specific cases reviewed found:

- One instance where the securities were sold at a significant loss to the estate, for which the PA/PG had to waive their fees in order to settle with the beneficiary.
- Tax returns prepared by a paid tax preparer but not signed appropriately on the return. A sample of tax returns found that they were signed "Self – Prepared."
- One tax return was prepared incorrectly, resulting in an overpayment of approximately \$21k to the DHS and an amount due the IRS in the same amount.
- IRS Form 1099s are not issued to independent contractors for tax preparation services.

IV. Standardized Reporting Process and Management Reviews

Throughout the audit, OAAS found instances where supervisory oversight and processes can be strengthened. The PA/PG was undergoing personnel transitions at the time of the audit, especially at the management level. However, there is no documentation regarding the functions of the supervising deputies to assist with the transition. As such, the supervisory reviews and roles and responsibilities are not institutionalized.

Audit interviews were conducted with supervising deputies of the PA and PG units. However, as of the date of this report, those supervisors are either no longer with the department or in a different position. The process and oversight reported here are based on those interviews. The new supervising deputies are in the process of learning their functions and therefore do not have the process finalized. Therefore, the processes reported here may not be current.

Based on interviews with supervising deputies, OAAS found that supervisory reviews for both the PA and PG units serve to ensure that a case file is complete and appropriately supported. The supervising deputies have a responsibility to review files before they are closed to ensure that all unresolved items are addressed and all outstanding items have been cleared.

For the PG unit, the extent of the oversight and accountability is as follows: on a monthly basis, the supervising deputy will generate a report from Panoramic System, its case management system, to review the field visits to ensure that they are occurring every 90 days. Periodically, the supervising deputy will run an "Inventory Due" report to ensure that the court required inventories have been filed within the statutory period.

This process did not take place during the transition period between the former supervising PG deputy and the current supervising PG deputy. OAAS reviewed the 'Overdue Client Field Visits' report as of November 29, 2005 and found that there were a total of seventeen (17) overdue visits. Out of the 17, 10 became overdue in November 2005. Most of the remaining 7 currently

⁸ Under the California Tax Preparer Act, any person who for a fee, assists with or prepares a State or Federal tax return, or assumes responsibility for such a return, or who offers these services is required to register with the CTEC as a tax preparer. Exemptions include tax preparers with a valid and current CPA license, an attorney, employee of the Internal Revenue Service, and certain financial institutions. All other tax preparers must be registered with CTEC or be subject to fines and penalties.

reside out of state,⁹ which make face-to-face field visits difficult. The deputy follows up on these cases via phone calls.

The supervising PG deputy also determines whether or not a referral case will move forward to 'Investigation' status and ultimately become 'Active,' reviews the final accounting, and makes the determination of when the case can be closed. The supervising deputy is available for consultation throughout the case management of the estate.

For the PA unit, the supervising deputy will review case files for quality assurance and provide consultation. Similar to the PG unit, the supervising PA deputy will run reports such as the Inventory Due, PA Cases Open > 12 months, and Caseload reports to monitor and review deputies' performances.

The processes in place do not appear to be formalized and rely on the deputies to be accountable for their case files. The PA/PG is forming a Quality Assurance committee to periodically review case files to ensure that the cases are done properly. Out of the case files tested, OAAS noted the following issues that indicate that the procedures and supervisory oversight needs to be strengthened, especially in the closeout process:

- An estimated tax payment that was not refunded to the estate when the case was closed. This amount (\$612) was set aside as a reserve for estimated tax payments. However, once the tax return was completed, no taxes were due. The amounts set aside were not returned back to the estate. The supervising deputy should ensure that this account (Estimated Tax Due) has been reconciled and cleared out prior to the final accounting and closing of an estate.
- An amount due to an estate (\$2,500) for double payment of funeral and burial services was not refunded. The case was closed even though the refund had not been received and there was no documented evidence that follow up was performed.
- There is no evidence that a 'Report of Proceedings under Probate Code' was filed for one of the summary probate cases tested. Once filed with the Court, this document discharges the PA/PG from their duties in the estate. Although this case had been closed, there was no evidence that the document had been filed. Supervising deputies should not close out a case until the discharge order has been received (probate cases) or the filing of the Report of Proceedings (summary probate cases).
- As noted earlier in the report, the priority of medical expenses related to the last illnesses were not clearly documented. In one instance, the priority of payment was not correctly applied. The payments should be reviewed by the supervising deputy prior to final accounting and closing of estate.
- Information in the Panoramic Database is not consistent with the case file documentation (i.e. Dates of Appointment, Dates of Distribution, etc.). Many fields are not filled out. Prior to closing out, during the final review, the supervising deputy should ensure the information in the Panoramic database is accurate and complete.
- Operating expenses were paid out of estates' U.S. Bank account, with the approval of the supervising deputy, rather than through the County's disbursement process. While these expenses were not audited, they appeared to be appropriate and valid as the funds used belong to the PA/PG. Doing so, however, bypasses County policy and procedures.

⁹ At the time of appointment, these individuals were permanent residents of San Diego County. Although they reside out of state, the San Diego County PA/PG is still the appointed guardian.

- A case had been closed but there is no documented response to the request for information by a family member. The case file includes a notarized letter from the eldest son that apparently went unanswered.
- In one instance, the PA's administrative fee charged to the estate did not appear to be correct. Initially, 4% of the estate value was charged, as appropriate. However, after the case was closed, the deputy continued to uncover additional assets. The PA/PG appropriately charged 4% of additional assets found. However, a month after the case closed, the deputy found an additional \$25 in assets. Due to the immateriality, the entire \$25 was charged to the estate as an administrative fee, rather than 4% or \$1. Per the supervising deputy, it is not cost effective to process and distribute the balance of \$24 to the DHS. The PA/PG lacks a policy, outlining the threshold for cases such as these.

V. Validation of Certain Transactions in County Counsel Memo

The Senior Deputy County Counsel for the PA/PG wrote an internal memo dated November 24, 2004 outlining concerns and risks identified in PA/PG operations. Specifically, with the current resources available within the PA/PG, County Counsel was concerned that certain practices could be exposing the County to unnecessary risks.

OAAS was asked to validate certain transactions cited in the memo. The transactions and the work performed by OAAS are listed below:

Stock and Securities

Estate of Paull, Edith – Per County Counsel, the PA/PG requested special administrative powers not general powers in the handling of this case. As such, the PA/PG's powers in this estate were restricted to specifically requested powers granted by the Court. The deputies make the determination which type of powers to request from the Court. In this case, they did not include the sale of securities.

However, the deputy authorized the sale of securities, which was beyond the scope of their powers. Once the PA/PG discovered that it was outside the scope of their powers, they tried to stop the sale but it was too late. Per the attorney for the beneficiary, this sale resulted in a substantial loss to the estate, which County Counsel cites as \$60,000 in the memo. Per County Counsel, the matter was settled by a waiver by the PA/PG of the administrative and legal counsel fees of approximately \$22,000.

OAAS validated that at the time of the sale of securities, the powers assigned to the PA/PG were special powers and that they did not have authorization to sell the stocks on behalf of the estate. OAAS was unable to validate the loss of \$60,000 sale of securities cited in the memo as it was based on a figure provided verbally by the attorney for the beneficiary. OAAS validated that the estate was not charged an administrative fee or any legal fees.

Real Estate Property Transactions – The County Counsel memo raised concerns regarding certain transactions where the PA/PG exercised its independent powers in the sale of real property rather than obtaining a court order. The PA/PG may do so in order to expedite the process but, per County Counsel, it may expose the PA/PG to liability if all the heirs and beneficiaries are not properly notified prior to the sale. Summaries of the estates cited in the memo that the Grand Jury requested OAAS to validate are listed below:

Estate of Leone, Caroline – The PA/PG received notice from the attorney for a trust established for the grandchildren of the decedent, stating that they had a quit claim deed to the real property in the estate. However, the claim was not recorded and the attorney was unable to provide the PA/PG with the original quit claim deed. Instead, a copy of the quit claim deed was provided. Per the County Counsel memo, the real estate manager wanted to sell the property without

disclosing the cloud on the title (wild deed quit claim deed). The attorney ultimately went to court to get a clean title on the estate prior to the sale.

OAAS reviewed the court order relinquishing any alleged ownership of the real property by the attorney and/or the trust. OAAS also validated that the approval of the order occurred prior to the sale of the property so that the property had a "clean" title at the time of sale. OAAS interviewed the real estate manager regarding the property. Per the manager, he had obtained assurance from the title insurance company that the property had a clean title. Furthermore, the title insurance company did not feel the attorney's claim was a legitimate claim. As such, the real estate manager felt that the sale could move forward.

Estate of Pyle, Richard - Per County Counsel, the PA/PG exercised their independent powers in the sale of the real property for this estate. In doing so, the PA/PG does not need a court order for the sale but is required to give notice to all the heirs and beneficiaries. In this instance, the PA/PG had difficulty notifying all the beneficiaries prior to the sale of the property. Per County Counsel, the potential liability in not properly notifying the heirs and beneficiaries could reach the value of the property, which eventually sold for \$461,000. The PA/PG was ultimately able to get relief from the Court, which mitigated the liability.

OAAS validated that the PA/PG issued Notice of Proposed Action throughout the year due to the PA/PG having difficulty identifying and notifying all the heirs and beneficiaries. OAAS also validated that the PA/PG did get declaratory relief from the court prior to the sale of the property.

Estate of Zenfler, Kazimierz - Per County Counsel, the PA/PG also exercised their independent powers in the sale of the real property for this estate. In this instance, the PA/PG also had difficulty locating and notifying all the beneficiaries. Per County Counsel, the potential liability in not properly notifying the heirs and beneficiaries could reach the value of the property, which eventually sold for \$442,000. The original transaction fell through and the PA/PG ultimately sold the property through a court confirmation.

OAAS validated that the Notice of Proposed Action was given throughout the year due to the PA/PG having difficulty identifying and notifying all the heirs and beneficiaries. OAAS validated that the PA/PG ultimately sold the property in April 2005 through a court confirmation. However, OAAS found that the combined total potential liability of the two properties (Pyle and Kazimierz) was approximately \$903,000 rather than \$930,000 as cited in the memo.

Estate of Geffe, Kathryn - Per County Counsel, the PA/PG exercised their independent powers in the sale of the real property for this estate. In this instance, the PA/PG had signed the contract to sell the property prior to notifying all the beneficiaries and prior to the final inventory. The PA/PG was subsequently able to obtain a waiver from the beneficiary, consenting to the sale, which mitigated the potential liability.

OAAS validated that a Notice of Proposed Action was not given to the heir prior to the sale of the property. OAAS also validated that an inventory had not been conducted at the time the requisite notice was prepared. Furthermore, OAAS validated that the PA/PG received a waiver, consenting to the sale of the property, subsequent to the sale.

VI. Assets Managed by the PA/PG in September 2005

OAAS vouched the 'Assets Managed September 05' report to supporting documentation. Documents reviewed included Oracle balances, Panoramic Inventory reports and U.S. Bank reconciliation and bank statements. The amounts vouched are as follows:

Funds with County Treasurer:	\$ 18,354,359.26
Funds with U.S. Bank	
Savings	6,185,858.58
Checking	<u>402,650.95</u>
Total Funds	\$ 24,942,868.79
Total Inventory	<u>21,256,547.09</u>
Total Assets Managed by the PA/PG as of September 2005	<u>\$ 46,199,415.88</u>

REPORT DISTRIBUTION

This report is intended solely for the information of the San Diego County Grand Jury. Further distribution of this report is at the discretion of the Grand Jury.

COMMENDATION

We would like to thank the PA/PG personnel for their assistance during this audit. We would also like to recognize the move towards continuous improvement promoted by the PA/PG that was prevalent in all areas we reviewed.

AUDIT TEAM

Susan Watanabe, Senior Finance Auditor
Yuki Matsuura, Associate Performance Auditor